

REMARKS/ARGUMENTS

The Applicants originally submitted Claims 1-25 in the application. In the present response, the Applicants have amended Claims 1-2, 13 and 21-24. No claims have been canceled or added. Accordingly, Claims 1-25 are currently pending in the application.

I. Rejection of Claims 1, 3, 6-7, 10, 12-17 and 20 under 35 U.S.C. §102

The Examiner has rejected Claims 1, 3, 6-7, 10, 12-17 and 20 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,887,254 to Halonen. The Applicants respectfully disagree.

Halonen is directed to downloading operating software to a mobile terminal. (*See* column 1, lines 52-54.) Halonen does not teach, however, a mobile phone including run-time software configured to cooperate with an external data source to determine downloaded data as recited in independent Claims 1 and 13. On the contrary, Halonen teaches downloading to an inactive memory to prevent disruption in service or availability of the mobile terminal by not interfering with an active operating program. (*See* column 1, lines 54-56 and column 4, lines 10-17.) Accordingly, Halonen does not teach each element of independent Claims 1 or 13.

Therefore, Halonen does not disclose each and every element of the claimed invention and as such, is not an anticipating reference of Claims 1 and 13 and Claims that depend thereon. Accordingly, the Applicants respectfully request the Examiner to withdraw the §102 rejection with respect to Claims 1, 3, 6-7, 10, 12-17 and 20 and allow issuance thereof.

II. Rejection of Claims 2, 4-5, 8, 9, 11, 18-19 under 35 U.S.C. §103

The Examiner has rejected dependent Claims 2, 4-5, 8, 9, 11, 18-19 under 35 U.S.C. §103(a) as being unpatentable over Halonen in view of one or more of U.S. Patents to Averbuch, *et al.*, Hall, Allard, Valentine, and Park. As discussed above, Halonen does not teach each element of independent Claims 1 and 13. Additionally, Halonen does not suggest each element of independent Claims 1 and 13 since Halonen teaches to prevent interaction with an active operating program when downloading. (*See* column 4, lines 10-17.)

The Examiner has not cited these patents to cure the above deficiency of Halonen but to teach the subject matter of specific dependent claims. Furthermore, the Applicants do not find where the cited references teach or suggest a mobile telephone including run-time software configured to cooperate with an external data source to determine downloaded data as recited in independent Claims 1 and 13. Thus, the cited combinations do not teach or suggest each element of independent Claims 1 and 13 and Claims dependent thereon.

Since the cited combinations fail to teach or suggest each element of independent Claims 1 and 13, the cited combinations do not provide a *prima facie* case of obviousness of Claims 1 and 13 and Claims dependent thereon. Accordingly dependent Claims 2, 4-5, 8, 9, 11, 18-19 and not unpatentable in view of the cited combinations and the Applicants respectfully request the Examiner to withdraw the §103(a) rejection and allow issuance thereof.

III. Rejection of Claims 21, 22, 24 and 25 under 35 U.S.C. §103

The Examiner has rejected Claims 21, 22, 24 and 25 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,689,825 to Averbuch, *et al.* in view of U.S. Patent No. 6,356,543 to Hall. The Applicants respectfully disagree since the cited combination does not teach or suggest a mobile phone including run-time software configured to cooperate with an external data source to determine downloaded data as recited in independent Claim 21.

Averbuch is directed to downloading updated software to portable wireless communication units. (*See* column 1, lines 7-10.) Averbuch teaches a processing unit 204 executes necessary procedures for the downloading of the updated software. (*See* column 3, lines 28-31 and lines 51-53.) The Applicants do not find, however, where Averbuch teaches or suggests run-time software on the portable wireless communication units is configured to cooperate with an external data source **to determine** downloaded data. On the contrary, Averbuch teaches the processing unit 204 performs downloads but does not teach or suggest the processing unit 204 cooperates to determine the downloads. Averbuch, therefore, does not teach or suggest each element of independent Claim 21.

Hall is directed to using the World-Wide Web to define certain mobile phone services a user may desire to see on a mobile phone display. (*See* column 1, lines 7-10.) Hall does not cure the above deficiency of Averbuch. On the contrary, Hall simply teaches a processor in the mobile phone installs an already selected downloaded application in the phone. (*See* column 4, lines 16-25.)

The cited combination of Averbuch and Hall, therefore fail to teach or suggest each element of independent Claim 21 and does not provide a *prima facie* case of obviousness of Claim 21 and

Claims dependent thereon. Accordingly Claims 21, 22, 24 and 25 are not unpatentable in view of the cited combinations. Thus, the Applicants respectfully request the Examiner to withdraw the §103(a) rejection and allow issuance of Claims 21, 22, 24 and 25.

IV. Rejection of Claim 23 under 35 U.S.C. §103

The Examiner has rejected Claim 23 under 35 U.S.C. §103(a) as being unpatentable over Averbuch in view of Hall and in further view of U.S. Patent Application No. 2001/0046862 for Coppinger, *et al.* The Applicants respectfully disagree.

Coppinger is directed to communication systems, components and methods operative with programmable wireless devices. (*See* page 1, paragraph 1.) As discussed above the combination of Averbuch and Hall does not teach or suggest a mobile phone including run-time software configured to cooperate with an external data source to determine downloaded data as recited in independent Claim 21. Coppinger has not been cited to cure this deficiency but to teach a compiler. Additionally, the Applicants do not find where Coppinger teaches or suggests a mobile phone including run-time software configured to cooperate with an external data source to determine downloaded data. Thus, the cited combination of Averbuch, Hall and Coppinger does not teach or suggest each and every element of independent Claim 21 and Claim 23 which depends thereon. Accordingly, the Applicants respectfully request the Examiner to withdraw the §103(a) rejection and allow issuance of Claim 23.


V. Conclusion

In view of the foregoing amendment and remarks, the Applicants now see all of the Claims currently pending in this application to be in condition for allowance and therefore earnestly solicit a Notice of Allowance for Claims 1-25.

The Applicants request the Examiner to telephone the undersigned attorney of record at (972) 480-8800 if such would further or expedite the prosecution of the present application.

Respectfully submitted,

HITT GAINES, P.C.


J. Joel Justiss
Registration No. 48,981

Dated: 11/12/04

P.O. Box 832570
Richardson, Texas 75083
(972) 480-8800